IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID LANE JOHNSON,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION *et al.*,

Defendants.

Case No. 5:17-cv-00047
Judge Sara Lioi

THE NFL DEFENDANTS' SUPPLEMENTAL REPLY IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS

PRELIMINARY STATEMENT

Despite having had multiple opportunities to make a *prima facie* showing of personal jurisdiction over the National Football League ("NFL") and the National Football League Management Council ("NFLMC," together with the NFL, the "NFL Defendants"), Johnson simply cannot. To make a *prima facie* showing of specific jurisdiction, Johnson must demonstrate that his cause of action—i.e., his motion to vacate the arbitration award—arose from the NFL Defendants' transaction of business in Ohio. Johnson has failed to do that. Instead, he submits a color-coded graphic purporting to demonstrate this action's links to Ohio that only highlights how minor and inconsequential those links are. Moreover, Johnson attempts legal gymnastics—relying on outdated cases and tortured interpretations—to support his erroneous argument that Ohio law recognizes general jurisdiction over nonresident defendants. Johnson is wrong, and even so, cannot meet the general jurisdiction standard under the federal Due Process Clause. Accordingly, the NFL Defendants respectfully request that this Court dismiss Johnson's complaint for lack of personal jurisdiction and improper venue, or, alternatively, transfer this case to the Southern District of New York where the underlying events took place.

ARGUMENT

I. PERSONAL JURISDICTION OVER THE NFL DEFENDANTS IS IMPROPER

A. Ohio law does not recognize general jurisdiction over nonresident defendants

Johnson relies on case law from more than fifty years ago—before the Ohio long-arm statute was even enacted—to support an argument that several courts have more recently considered and rejected. Contrary to Johnson's misleading arguments, Ohio law does not recognize general jurisdiction over nonresidents. *See, e.g.*, *Conn v. Zakharov*, 667 F.3d 705, 717 (6th Cir. 2012). The case on which Johnson relies entirely, *Perkins v. Benguet Consol. Min. Co.*,

was decided before Ohio enacted its long-arm statute. 107 N.E.2d 203 (Ohio 1952). Thus, the personal jurisdiction analysis in *Perkins* addressed the requirements of the federal Due Process Clause—it did not address the requirements of the Ohio long-arm statute.

Since *Perkins* was decided in 1952, Ohio enacted a long-arm statute.[1] Both state and federal courts have recognized that the Ohio long-arm statute is more limited than the federal Due Process Clause. *See Conn*, 667 F.3d at 712 ("Ohio does not have a long-arm statute that reaches to the limits of the Due Process Clause, and the analysis of Ohio's long-arm statute is a particularized inquiry wholly separate from the analysis of Federal Due Process law."); *Goldstein v. Christiansen*, 638 N.E.2d 541, 545 n.1 (Ohio 1994) (noting that the long-arm statute does not "give Ohio courts jurisdiction to the limits of the Due Process Clause"). Thus, since the Ohio long-arm statute was enacted in 1965, courts have been conducting the familiar two-step personal jurisdiction analysis: (1) analyzing personal jurisdiction under the Ohio long-arm statute, and then (2) analyzing personal jurisdiction under the federal Due Process Clause. *See Haley v. City of Akron*, No. 5:13-cv-00232, 2014 WL 804761, at *3 (N.D. Ohio Feb. 27, 2014) (Lioi, J.).

Because *Perkins* did not address the Ohio long-arm statute, it has no bearing on the personal jurisdiction analysis in the present case. In fact, the court in *Perkins* noted that its holding was relevant "[w]here jurisdiction is not limited by statute to causes of action arising within this state." 107 N.E.2d at 204. Ohio's long-arm statute does precisely that—it limits jurisdiction over nonresident defendants by statute to causes of action arising within the state. Cases citing to *Perkins* discussed in Johnson's brief—including *Wainscott* (1976), *Penrod* (1979), and *Singleton* (1987)—are all at least three decades old and similarly have no bearing on

[1] Johnson blindly ignores this fact, despite being informed of the development by the NFL Defendants in their previous reply brief (Doc. No. 38 at 1709 n.5.) Johnson's continued reliance on *Perkin*s underscores the weakness of his arguments.

modern personal jurisdiction analysis under the Ohio long-arm statute.[2] Indeed, the cases cited by Johnson do not discuss or even cite the Ohio long-arm statute—those cases merely dropped the first prong of a two-prong inquiry.[3]

Additionally, Johnson's citation to *Brunner v. Hampson,* 441 F.3d 457 (6th Cir. 2006), is misleading. While the Sixth Circuit technically recognized general jurisdiction in Ohio in *Brunner* in 2006, Johnson fails to note that the Sixth Circuit subsequently called that finding into question in *Conn v. Zakharov,* 667 F.3d 705 (6th Cir. 2012). The *Conn* court acknowledged that courts have come to "inconsistent, and in some cases directly contradictory, conclusions on whether Ohio law recognizes general jurisdiction," but held unequivocally that "it is clear under Ohio law, a court may exercise personal jurisdiction over a non-resident defendant only if specific jurisdiction can be found under one of the enumerated bases in Ohio's long-arm statute." *Id.* at 717-18. Johnson cites no case after 2012 to support his argument that general jurisdiction over nonresident defendants exists in Ohio.

Furthermore, Johnson's tortured reading of *Conn* ignores the language of the opinion itself. The *Conn* court observed that "Ohio law does not appear to recognize general jurisdiction over non-resident defendants." *Id.* at 717. Nowhere does the *Conn* court provide support for Johnson's argument that general jurisdiction over "non-resident defendants *outside* the long-arm statute," as supported by case law *predating* the Ohio long-arm statute, is appropriate. (Doc. No. 55 at 3044 (emphasis in original).) To the contrary, *Conn* and other courts in this Circuit have

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[2] *See Wainscott v. St. Louis-San Francisco Ry. Co.*, 351 N.E.2d 466 (Ohio 1976); *Penrod v. Baltimore & O.R. Co.*, 412 N.E.2d 949 (Ohio Ct. App. 1979); *Singleton v. Denny's, Inc.*, 522 N.E.2d 1097 (Ohio Ct. App. 1987).

[3] Johnson's citation to *U.S. Spring Comms. Co. v. Mr. K's Foods, Inc.,* 624 N.E.2d 1048 (Ohio 1994), is similarly misleading. In *Mr. K*, the Ohio Supreme Court addressed a totally different situation—whether, once an Ohio court determined that it could assert personal jurisdiction over a nonresident defendant pursuant to the long-arm statute, the Ohio court could also exercise jurisdiction over claims that did not arise in Ohio. *Id.* at 1052. In other words, the Ohio Supreme Court addressed whether personal jurisdiction had to be established over claims in addition to defendants. In *Mr. K*, there was no question as to whether personal jurisdiction was proper over the nonresident defendant, making Johnson's characterization of the case misleading. *Id.* at 1052-53.

held exactly the opposite. *See, e.g.*, *Veteran Payment Sys., LLC v. Gossage*, No. 5:14CV981, 2015 WL 545764, at *6 (N.D. Ohio Feb. 10, 2015) (Lioi, J.) ("Ohio law does not permit the exercise of general jurisdiction."); *Puronics, Inc. v. Clean Resources, Inc.*, No. 5:12-cv-01053, 2013 WL 149882, at *4 n.3 (N.D. Ohio Jan. 14, 2013) (noting debate about whether Ohio's long-arm statute precludes general jurisdiction and concluding that *Conn* resolved the debate).

B. Personal jurisdiction is improper under the Federal Due Process Clause

Even if Johnson were correct that general jurisdiction exists under Ohio law—which he is not—asserting personal jurisdiction over the NFL Defendants would not comport with the federal Due Process Clause. "General" jurisdiction is recognized under the Due Process Clause when a defendant's affiliations with the state are "continuous and systematic." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014). However, a defendant's merely engaging in a "substantial, continuous, and systematic course of business" is not sufficient to establish general jurisdiction. *Id.* at 760-61. Rather, a defendant's affiliations with the State must be so "continuous and systematic" as to render it essentially "at home" in the forum state. *Id.* at 761. This "at home" test has been applied to unincorporated entities, such as the NFL Defendants. *See Dallas Texans Soccer Club v. Major League Soccer Players Union*, 4:16-CV-464, 2017 WL 1165662, at *3 (E.D. Texas Mar. 29, 2017) (noting that the general jurisdiction inquiry "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide," and refusing to find general jurisdiction over a soccer players' union—an unincorporated association—when the union represented players from twenty teams in the league and only two of those teams were in the relevant state (quoting *Daimler*, 134 S. Ct. at 762 n.20)).

Johnson attempts to sidestep the "at home" test articulated by the *Daimler* Court in favor of a "substantial control" test, pointing to a First Circuit decision from 1990. *Donatelli v. Nat'l Hockey League*, 893 F.2d 459, 461 (1st Cir. 1990). However, *Donatelli* does not address the

question of whether a defendant's affiliations with a state are so "continuous and systematic" as to render it essentially "at home," which is the operative inquiry. Furthermore, Johnson effectively asks this Court to find that the NFL, as an unincorporated association, is "subject to the general personal jurisdiction of every court having jurisdiction over one of its members." *Id.* However, Johnson fails to note that the First Circuit specifically rejected this conclusion in *Donatelli*. *Id.*

Johnson's arguments that two NFL member clubs are located in Ohio and conduct activities in Ohio, and that taxpayers in Ohio subsidize activities related to those member clubs are irrelevant, and underscore the weakness of his argument. Simply put, the NFL Defendants cannot possibly be "at home" in every state in which any of the 32 NFL member clubs is located. *See Daimler*, 134 S. Ct. at 762 n.20 ("A corporation that operates in many places can scarcely be deemed at home in all of them."). Johnson's argument that an agreement between the NFL and the City of Cleveland establishes the NFL Defendants' residency in Ohio conflates the "residency" test for diversity jurisdiction with the "at home" test for personal jurisdiction—the *Daimler* "at home" test requires more substantial contacts than the "residency" diversity jurisdiction test, such as place of incorporation or principal place of business. *Id.* at 760. Furthermore, Johnson fails to acknowledge that the NFL's contacts with Ohio must be viewed in light of its activities nationwide, that several states have two or more NFL member clubs, and that taxpayer subsidies support resident NFL teams in all jurisdictions.[4] *See Dallas Texans*, 2017 WL 1165662, at *3.

[4] For instance, California has four NFL teams; Florida has three NFL teams; and several other states have two NFL teams. *See* OFFICIAL NFL RECORD & FACT BOOK: 2016 SEASON, http://www.nfl.com/static/content/public/photo/2015/07/21/0ap3000000502939.pdf.

Additionally, as recent press coverage of the Oakland Raiders upcoming move to Las Vegas has highlighted, taxpayer subsidies support local NFL teams in all jurisdictions. *See* Ken Belson & Victor Mather, *Raiders Leaving Oakland Again, This Time for Las Vegas*, N.Y. TIMES (Mar. 27, 2017),

C. Because Johnson's claims do not arise from the NFL Defendants' contacts with Ohio, there is no specific jurisdiction under the Ohio long-arm statute

Finally, because Johnson has failed to demonstrate that his claim arises from Ohio-based conduct, he has failed to make a *prima facie* case of specific jurisdiction. Specific personal jurisdiction over a non-resident defendant exists only if the defendant's conduct falls within one of the nine bases for jurisdiction listed in the Ohio long arm statue, including the transaction of business in Ohio. *See* Ohio Rev. Code § 2307.382(A). Additionally, "only a cause of action arising from acts enumerated in this section [2307.382] may be asserted against [the defendant]." Ohio Rev. Code § 2307.382(C).

Johnson continues to rely on minor events that allegedly took place in Ohio to support the assertion of specific jurisdiction. (*See* Doc. No. 55 at 3049.) These events—the majority of which took place *before* the arbitration underlying this cause of action—are so minor in nature and so far attenuated to the arbitration that it strains reason to conclude that Johnson's claim to vacate the arbitration award "arises from" these events. Johnson's additional arguments regarding a discovery hearing that purportedly took place in this District and the receipt of information related to his appeal in this District show nothing more than that Johnson's attorneys are located in Ohio. Those allegations are plainly insufficient to invoke specific jurisdiction over the NFL Defendants under the Ohio long-arm statute. (*See also* Doc. No. 48 at 2057-60.)

II. VENUE IS IMPROPER AS TO THE NFL DEFENDANTS

For venue to be proper in this District, this Court must have personal jurisdiction over the NFL Defendants. *See* 28 U.S.C. § 1391(b)(1); 28 U.S.C. § 1391(c)(2). As discussed above, personal jurisdiction over the NFL Defendants in this case is improper.

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https://www.nytimes.com/2017/03/27/sports/football/nfl-oakland-raiders-las-vegas.html?_r=0 ("The league owners preferred the certainty of a substantial amount of tax dollars for a stadium over uncertain prospects for the team in Oakland.").

Johnson also argues that venue is proper under section 1391(b)(2), which permits venue in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). However, in advancing his argument, Johnson again relies on events that took place in this District before the arbitration. (*See* Doc. No. 55 at 3053.) These events clearly have no bearing on the arbitration, which is at issue in the present litigation. Additionally, Johnson's assertion that he received numerous communications from the NFL in Ohio during his appeal cannot support the finding that "a substantial part of the events" underlying this action took place in this District, as required by the general venue statute. *See Simplex-Turmar, Inc. v. Roland Marine, Inc.*, 1997 WL 736541, at *3 (W.D.N.Y. Nov. 14, 1997) ("[Plaintiff] seeks to establish venue based upon the location of its attorneys' offices. . . [but] receipt of reply letters at such offices did not constitute a 'substantial part of the events' underlying this action.").

III. EVEN IF VENUE WERE PROPER IN THIS DISTRICT, THIS CASE SHOULD BE TRANSFERRED TO THE SOUTHERN DISTRICT OF NEW YORK

Absent dismissal, this Court should transfer this case to the Southern District of New York, the "center of gravity" of the underlying arbitration at issue in this action. *See Phelps v. U.S.*, No. 1:07CV02738, 2008 WL 5705574, at *4 (N.D. Ohio Feb. 19, 2008) (Lioi, J.) (quoting *N. Am. Demolition Co. v. FMC Corp.*, No. 5:05CV0104, 2005 WL 1126747, at *3 (N.D. Ohio Apr. 28, 2005)). This Court may properly transfer this case to the Southern District of New York because the action "might have been brought" there—Johnson does not dispute this fact. *See* 28 U.S.C. § 1404(a). Furthermore, the relevant factors—including plaintiff's choice of forum, convenience of the parties and witnesses, location of discovery, and the public interest factors—favor transfer to the Southern District of New York. As a non-resident of Ohio, Johnson's choice

of venue is given less consideration. *Means v. United States Conference of Catholic Bishops*, 836 F.3d 643, 651 (6th Cir. 2016).

In arguing the contrary, Johnson evinces a fundamental misunderstanding of the procedural posture of this case. Johnson argues that the "NFL again misleadingly focuses only on Johnson's actions to vacate the Award and ignores his other claims" and that "virtually none of the underlying events concerning Johnson's discipline occurred in New York." (Doc. No. 55 at 3054.) In an action to vacate an arbitration award, however, courts play a "limited role" in reviewing arbitration decisions and "are not permitted to consider the merits of an arbitration award even if the parties allege that the award rests on errors of fact or misinterpretation of the contract." *Andersons, Inc. v. Horton Farms, Inc.*, 166 F.3d 308, 328 (6th Cir. 1998) (internal quotation marks and citations omitted). Johnson is effectively encouraging this Court to examine matters wholly outside the arbitration, which is impermissible under the law in this Circuit. Moreover, Johnson's allegations that "most of the events underlying Johnson's discipline undisputedly occurred in Ohio" is misleading and simply erroneous. (Doc. No. 55 at 3054-55; *see* Doc. No. 48 at 2058 ("Johnson tested positive and was suspended under the PES policy almost a year after Dr. Lombardo was no longer in Ohio.")).

The only events and facts relevant to venue analysis in this case are those related to the arbitration award, and those support transfer of this case to the Southern District of New York. (*See also* Doc. No. 22-1 at 804-08; Doc. No. 48 at 2063-64.)

CONCLUSION

For the reasons stated above, as well as those set forth in the NFL Defendants' motion, the NFL Defendants respectfully request that this Court dismiss Johnson's complaint for lack of personal jurisdiction and improper venue, or alternatively, transfer this action to the Southern District of New York.

Dated: April 10, 2017

/s/ Philip M. Oliss

Frederick R. Nance (0008988)
Philip M. Oliss (0066528)
philip.oliss@squirepb.com
SQUIRE PATTON BOGGS (US) LLP.
127 Public Square, Suite 4900
Cleveland, Ohio 44114-1304
Telephone: (216) 479-8500
Facsimile: (216) 479-8780

Daniel L. Nash (admitted *pro hac vice*)
dnash@akingump.com
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

Counsel for Defendants National Football League and National Football League Management Council

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

Pursuant to Local Rule 7.1(f), the undersigned certifies that the foregoing memorandum adheres to the page limitations set forth in Local Rule 7.1(f) for memoranda relating to dispositive motions. The memorandum also complies with the page limits set forth in the Initial Standing Order (Doc. No. 8).

/s/ Philip M. Oliss
Attorney for the Defendants National Football League and National Football Management Council

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NFL Defendants' Supplemental Brief in Support of their Motion to Dismiss was electronically filed on April 10, 2017. Notice of this filing will be sent to all Parties by operation of the Court's electronic filing system. The Parties may access this filing through the Court's system.

/s/ Philip M. Oliss
Attorney for the Defendants National Football League and National Football Management Council